

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALAHABAD BENCH, ALAHABAD**

Allahabad, this the 20th day of **March**, 2012

Present :

Hon'ble Mr. D.C. Lakha, Member-A

Original Application No.929/2003

Gulab Son of Ram Dularey aged about 45 years, Resident of
Village Munkapur, Post Sirathu, District Allahabad.

.....Applicant.

By Advocate – Shri Satish Dwivedi

VERSUS

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railways, Allahabad.
3. The Assistant Divisional Engineer, North Central Railways, Fatehpur.

.....Respondents.

By Advocate : Shri Anil Kumar

Reserved on 06.01.2012

ORDER

By Hon'ble Mr. D.C. Lakha, A.M. :

The instant OA has been instituted for the following relief(s) :

- (i) ***That the order/letter dated 20.3.2002 and 28.10.2002 (Annexure A-I and A-2) passed by respondent No.3 may be declared illegal and same may be quashed and further the respondents No.2 be directed to consider the case of applicant for his re-engagement,***



screening test and regularization/regular appointment as per direction contained in judgment/order dated 16.1.2002 given in Original Application No.775 of 1993 Gulab Vs. Union of India & others and pass appropriate order and communicate the same to the applicant.

- (ii) Any other and further relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may be passed/allowed in favour of applicant.**
- (iii) Cost of the proceeding be awarded to the applicant.**


2. The facts as stated by the applicant are that the applicant was recruited as Casual Khalasi under the Nirman Nirikshak (Vishesh), Fatehpur w.e.f. 4.6.1972 and he continued to work till 14.11.1979 and his work and conduct has been excellent but after 14.11.1979 without stating any reason and giving any opportunity, the applicant was illegally stopped from working. He made a representation to respondent No.2 but no action was taken on his representation. Thereafter, the respondents re-engaged several fresh candidates and junior persons to the applicant and regularized their services but the applicant was not given any opportunity for re-engagement. He filed an OA No.775/93 - Gulab Vs. Union of India and others which was finally disposed of on 16.1.2002 with direction to respondents to examine the case of the applicant on the given line and if any junior to the applicant has been regularized after his name was entered for the first time in



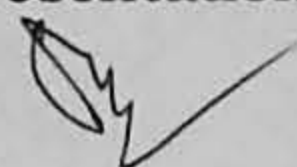
the Live Register for Casual Labour he shall be regularized on Group 'D' post. The applicant shall be regularized w.e.f. the regularization of his juniors. The copy of the order of the Tribunal dated 16.1.2002 is annexed as Annexure-A-4. The copy of the order was given to the Divisional Railway Manager, N.R. Allahabad (Annexure-A-5). The names of the junior persons who were given regular appointment are as under :

1. Sri Krishna Son of Sri Chotey Lal, employed as Casual worker w.e.f. 11.1.1976 under the Assistant Engineer, Northern Railways, Fatehpur.
2. Sri Basudeo son of Sri Jawahar, employed as Casual Worker with effect from 20.12.1976 under the Assistant Engineer, Northern Railway, Fatehpur.
3. Chatrapal, employed as Casual Labour/Worker, under the Assistant Engineer, Northern Railway, Fatehpur.
4. Sriniwas, employed as Casual Worker, under the Assistant Engineer, Northern Railway, Fatehpur from the year 1977.
5. Ram Sewak, employed as Casual Worker, under the Assistant Engineer, Northern Railway, Fatehpur from the year 1978.
6. Shiv Baran, employed as Casual Worker, under the Assistant Engineer, Northern Railway, Fatehpur from the year 1978.
7. Kamta Prasad Son of Ram Charan working under the Inspector of Works (Special), Northern Railway, Fatehpur with effect from 9.10.1974.

In addition to above named persons Shri Chedi Lal, Sri Brij Mohan, Sri Nanhoo, Sri Ram Pal Mistri, Sri Azam, Sri Gulam Rasul, Sri Naim who were engaged subsequent to the applicant have been given regular appointment and



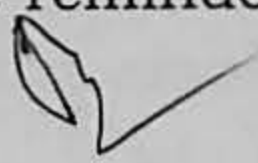
their services have been allowed to continue till the date of regularization but the applicant was ignored. In OA No.775/93 the case of the applicant was that his name was included in the Casual Labour Register in the year 1972 but subsequently without any reasonable cause or justification and without giving any information to the applicant his name was deleted from the Register and thereafter on the request made by the applicant his name was again entered in the Casual Labour Register. The Assistant Divisional Engineer, Northern Railway, Fatehpur in compliance of the aforesaid order of the Tribunal in OA No.775/93 had considered the matter only for casual appointment and not for regular appointment and as such the order dated 20.3.2002 whereby the Assistant Divisional Engineer, Northern Railway, Fatehpur rejected the claim of the applicant illegally and without considering the entire material available on record, has passed the order dated 20.3.2002, which is one of the impugned orders (Annexure-A-1). The respondents without examining the Casual Labour Register of the year 1972, 1973 and 1974 have calculated the days upto 458. It is wrongly mentioned in the order dated 20.3.2002 that the applicant had applied for entering his name in the Casual Labour Register. In fact, the applicant had submitted the representation to the effect



that the order, whereby his name was deleted from the Casual Labour Register, may be cancelled and his name be entered in continuation of his earlier period and not as a fresh candidate. But while passing the order dated 20.3.2002, the respondents have not considered this prayer and have entered the name of the applicant treating him as his date of first entry in the Casual Labour Register which is contrary to the direction contained in the order dated 16.1.2002. The Railway Administration never called the applicant for engagement as Casual Worker but the junior persons and fresh candidates were engaged and regularized in service by adopting the policy of pick and choose. As a consequence of this act of the respondents, the junior and fresh candidates became senior to other persons. In the case of the applicant, at the time of re-engagement, screening test and regularization of junior persons and fresh candidates, the applicant was never called after his dis-engagement and he was never given an opportunity of re-engagement, so there is no fault on the part of the applicant. The correct fact is that the name of the applicant is continuing in the Casual Labour Register since 1972 except for few periods when his name was deleted without any reason and justification. Under these circumstances, the case of the applicant should have been considered on

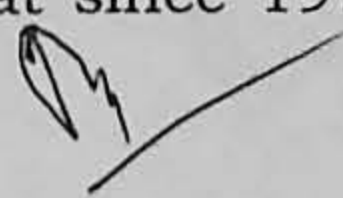


the basis of his initial date of entering his name in the Casual Labour Register i.e. 1972 and not on the basis of year 1987. The Railway Administration, for the purpose of regular appointment/regularization, considered the list of casual workers maintained at Division level and not on Unit level and for the purpose of considering for the regularization of services of the applicant, the Divisional seniority list of casual workers in compliance of the order of the court has not been considered and there is nothing in the order dated 20.3.2002 to indicate that the Divisional seniority list was considered in passing the order dated 20.3.2002. Infact, the order passed by respondent No.3 is based on the seniority list of Unit level only and he has not considered the matter of regularization of service of the applicant in reference to the casual workers listed in Divisional seniority list and also outsiders and junior persons as such the order dated 20.3.2002 is illegal. The applicant submitted a representation to Divisional Railway Manager, Allahabad by Registered Post on 8.6.2002 stating therein the aforesaid facts and made request that his case may be considered for re-engagement/regularization with preference to junior persons and freshers in accordance with the order dated 16.1.2002 by Hon'ble Court and for this purpose he gave more than one reminders also but the



applicant was neither called for re-engagement nor screening test and regularization and hence the order is highly arbitrary and unreasonable. It is clear that the impugned order is passed without application of mind and it is illegal. The impugned orders passed are also violative of Article 14 and 16 of the Constitution of India. The applicant's case has not been considered as per the direction of the Tribunal dated 16.1.2002 by calculating his correct number of working days and taking in view the fact of the juniors and fresh persons having been engaged, the impugned orders dated 20.3.2002 and 28.2.2002 are illegal and hence the prayer has been made for quashing and setting aside these impugned orders.

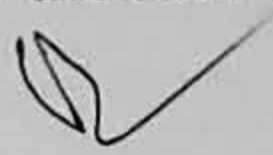
3. On notice, the respondents have filed the counter. In the counter reply with reference to the direction passed by this Tribunal in OA No.775/93 decided on 16.1.2002, the respondents have stated that they have considered the case of the applicant in the light of the direction given by the Tribunal and has passed the order dated 20.3.2002. In paragraph 03 of this order, it has been explicitly mentioned that the date of engagement is not a determining factor for assigning the seniority. The total number of working days is the basis for assigning the seniority. In case of the applicant, it has been mentioned that since 1974 to 1979



the applicant had worked only for 458 days, while the juniors to the applicant have worked for more than these days. The so called juniors of the applicant have worked upto 1977 for 581 days. The name of the applicant has already been recorded in Casual Live Register and the same is continuing. Since that date no junior to the applicant has been engaged, hence this orders at Annexure -A-1 and A-2 of the OA have been correctly passed. When the applicant is not entitled for the re-engagement, as no junior to the applicant has been engaged, this relief too can not be granted. The regularization come into existence only for those labourers, who are on railways roll. It is admitted by the applicant that he is not on the railway roll, as such there is no question for consideration of regularization of the applicant. Accordingly, the claim of the applicant for the relief he has sought is controverted and on that basis the OA is prayed for being dismissed by the respondents. It is submitted in the counter that the applicant has not submitted any representation for the last two decades. The applicant did not report since 14.11.1979. On the one hand the applicant has mentioned that juniors to him were engaged and on the other he has also stated that fresh faces were also engaged. That being so he should have made a representation to the competent authority that juniors to




him were engaged but he has never made any such representation. He has not even mentioned the name of his juniors. As per the circular of General Manager, Northern Railway, Baroda House, New Delhi dated 20.8.1987 the applicant approached the department for endorsement of his name in the Live Casual Labour Register under IOW Fatehpur, the name of the applicant was registered at Sl. No.46. No junior or fresh casual labour has been absorbed, re-engaged and regularized in his seniority unit. The names mentioned in paragraph 4.8 of the OA i.e. S/Shri Krishna S/o Shri Chotey Lal, Basudeo S/o Shri Jawahar, Chatrapal, Sriniwas, Ram Sewak, Shiv Baran and Kamta Prasad S/o Sri Ram Charan are not juniors to the applicant. As per extent policy and statutory rules, as contained in the Indian Railway Establishment Manual, the seniority of daily rated casual labours should be maintained unit/department wise on the basis of their working days. The applicant had worked in between 4.6.1974 to 14.11.1979 for 458 days and thereafter he himself left the job at his own will, whereas the other staff was working even after 14.11.1979 and they were also continuing in service. The applicant submitted a representation dated 11.1.1993 addressed to the respondent No.2 with regard to the endorsement of his name in Casual Labour Live Register shows that he wanted



to get his name registered in the Register. At present number of persons senior to the applicant are awaiting for his re-engagement or re-absorption.


4. Rejoinder affidavit is filed by the applicant in which the statement made in the counter affidavit about the number of days of the applicant and other assertions contradicted in the counter, countering the assertion in the OA, are denied. But in support of the denial in the rejoinder affidavit no documentary proof has been adduced. There is no supplementary rejoinder affidavit has been filed on behalf of the applicant. Supplementary counter affidavit has been filed on behalf of the respondents stating that in a similar matter the Hon'ble Tribunal has passed final order dated 2.1.2006 in OA No.1172/03 – Shri Ajay Kumar Vs. Union of India & others directing the respondents to consider the case of the applicant for regularization in accordance with law. The same was challenged by the respondents in Writ Petition No.21799 of 2006 Union of India Vs. Ajay Kumar and others before the Hon'ble High Court, Allahabad in which the order passed by the Hon'ble Tribunal dated 2.1.2006 has been set aside. The ratio of the judgment is reproduced (as given in the supplementary counter reply) as under :



"In view of the above, we are of the considered opinion that the directions issued by the Tribunal are in futility and issuing such a direction, which can not carried out in accordance with law, are not permissible in law. As the claim of the respondent employee can not be considered in accordance with law and he is not entitled for any relief, the direction issued by the learned Tribunal is in contravention of scheme framed by the present petitioner. The court or Tribunal can not pass an order in contravention of law. Thus asking the present petitioner's to consider the case of the respondent employee for re-employment and regularization, being a futile exercise, is not going to serve any purpose and the writ petition deserves to be allowed."

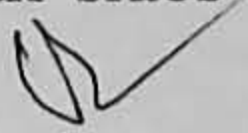
5. I have heard learned counsel for the parties and perused the pleadings available on record. Learned counsel for the applicant has also filed the written submission in which the points of fact and grounds taken in the OA have been reiterated.

6. It is contended by the learned counsel for the applicant that the case of the applicant has been considered only for entering his name in the Live Casual Labour Register and not for regularization as directed in the order of the Tribunal dated 16.1.2002 in OA No.775/93. The juniors, whose names have been given in the O.A. have been regularized ignoring the rightful claim of the applicant for the same kind of relief. Various representations given to the competent authority in this connection have borne no fruit in favour of the applicant. Hence, it is a clear cut case of discrimination and both the orders should be set aside.



Learned counsel for the respondents, in support of the counter affidavit as well as supplementary counter affidavit, has controverted the basic point raised by the applicant in the OA that his juniors have been regularized. It has been reiterated that the applicant put in 458 days whereas other officials regularized (said to be juniors to the applicant in the OA) had put in 581 days. The determining factor to count the seniority position is not the date and year of appointment but the number of days actually put in for working. The applicant had worked in between 4.6.1974 to 14.11.1979 for 458 days and thereafter, he left the work on his own. Relying upon the judgment of the Hon'ble High Court in Writ Petition as referred to in the supplementary counter reply, learned counsel for the respondents has contended that it would be futile to put in avoidable labour when there is no case in favour of the applicant in view of the judgment of the Hon'ble High Court. Another judgment of the Hon'ble Supreme Court dated 10.04.2006 in Civil Appeal, **Secretary, State of Karnataka and others Vs. Umadevi & ors.** has also been relied upon by the respondents' counsel.

7. Having heard both the counsels and after perusal of the pleadings of the parties, I have given serious thoughtful consideration to the contentions of both sides on the facts



available before me on the basis of the averment and pleadings of the parties. It is seen that the applicant had put in 458 days during the period he was working. Representation for entering the name in the Casual Labour Register has been considered and accordingly the name of the applicant was entered in the Casual Labour Register. The name of the other workers as referred to and indicated in the OA of the applicant had put in 581 number of days and on that basis they were regularized. The contention of the respondents is that no junior person (having put in less number of days) to the applicant has been regularized and this contention has not successfully been controverted by the applicant by giving proof to the contrary. I, therefore, hold that there is no merit in the OA and hence the same is dismissed. No order as to costs.


Member-A

RKM/